

Arizona Supreme Court
Criminal Death Penalty Appeal

CR-13-0282-AP

STATE OF ARIZONA v AARON BRIAN GUNCHES

Appellate Case Information

Case Filed: 14-Aug-2013
Case Closed:

Dept/Composition

En Banc

Hon. Scott Bales
Hon. John Pelander
Hon. Robert M. Brutinel
Hon. Ann A. Scott Timmer
Hon. Clint Bolick

Side 1. STATE OF ARIZONA, Appellee

(Litigant Group) STATE OF ARIZONA

- State of Arizona

Attorneys for: Appellee

Mark Brnovich, Esq. (AZ Bar No. 14134)
John R Lopez, IV, Esq. (AZ Bar No. 19182)
Jeffrey A Zick, Esq. (AZ Bar No. 18712)
Lacey Stover Gard, Esq. (AZ Bar No. 22714)
John Pressley Todd, Esq. (AZ Bar No. 3863)

Side 2. AARON BRIAN GUNCHES, Appellant

(Litigant Group) AARON BRIAN GUNCHES

- Aaron Brian Gunches

Attorneys for: Appellant

Stephen Whelihan, Esq. (AZ Bar No. 13448)
Louise Stark, Esq. (AZ Bar No. 9567)

CASE STATUS

Apr 21, 2016.....Submitted

Sep 8, 2015.....At Issue

Jun 16, 2014.....Record Complete

Aug 14, 2013.....Pending

PREDECESSOR CASE(S)		Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR	CR2003-038541					
MAR	CR2003-038541-001					

91 PROCEEDING ENTRIES

1.	14-Aug-2013	FILED: Notice of Appeal from Superior Court (Clerk, MCSC) (Judgment filed in MCSC on 8/1/2013)
2.	28-Aug-2013	FILED: Reporter's Transcript - 09/19/11 - Continuance (Cindy Lineburg)
3.	18-Sep-2013	FILED: Reporter's Transcript - 04/06/11 - Hearing Rule 11 Exam (Marmie Guimont)
4.	20-Sep-2013	FILED: First Motion for Extension of Time to File Transcripts (Laura Ashbrook)
5.	20-Sep-2013	FILED: Reporter's Transcript - 12/18/12 - Rule 11 Status Conference (Laura Ashbrook)
6.	20-Sep-2013	FILED: Reporter's Transcript - 9/2/10 - Status Conference (Laura Ashbrook)
7.	20-Sep-2013	FILED: Reporter's Transcript - 10/19/10 - Status Conference (Laura Ashbrook)
8.	20-Sep-2013	FILED: Reporter's Transcript - 3/11/11 - Motion to Dismiss (Laura Ashbrook)
9.	20-Sep-2013	FILED: Reporter's Transcript - 4/12/11 - Pretrial Conference (Laura Ashbrook)
10.	20-Sep-2013	FILED: Reporter's Transcript - 9/28/11 - Status Conference (Laura Ashbrook)
11.	20-Sep-2013	FILED: Reporter's Transcript - 11/3/11 - Complex Case Management Conference (Laura Ashbrook)
12.	20-Sep-2013	FILED: Reporter's Transcript - 2/10/12 - Rule 11 Hearing (Replaced by Transcript filed 11/24/14, See Event No 61) (Laura Ashbrook)
13.	20-Sep-2013	FILED: Reporter's Transcript - 3/9/12 - Status Conference (Laura Ashbrook)
14.	20-Sep-2013	FILED: Reporter's Transcript - 5/23/11 - Status Conference (Laura Ashbrook)
15.	20-Sep-2013	FILED: Reporter's Transcript - 8/11/11 - Final Trial Management Conference (Laura Ashbrook)
16.	20-Sep-2013	FILED: Reporter's Transcript - 8/17/11 - Ex Parte Motion (Laura Ashbrook)

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| 17. | 20-Sep-2013 | FILED: (Duplicate) Reporter's Transcript - 9/28/11 - Status Conference (Laura Ashbrook) (Incorrect transcript date - See Dkt 33 for correct transcript) |
| 18. | 20-Sep-2013 | FILED: Reporter's Transcript - 4/13/12 - Motion for Funds (Laura Ashbrook) |
| 19. | 20-Sep-2013 | FILED: Reporter's Transcript - 7/30/12 - Pretrial Conference (Laura Ashbrook) |
| 20. | 20-Sep-2013 | FILED: Reporter's Transcript - 10/22/12 - Status Conference (Laura Ashbrook) |
| 21. | 20-Sep-2013 | FILED: Reporter's Transcript - 10/30/12 - Rule 11 Hearing (Laura Ashbrook) |
| 22. | 20-Sep-2013 | FILED: Record on Appeal - MCSC - Instruments and MEs (Electronic) |
| 23. | 20-Sep-2013 | FILED: Record on Appeal - MCSC -
(NOT SCANNED) 1 SEALED Env (HD: 10/22/2003, COPY GJ Transcript)

(SCANNED) 9 SEALED Manila Envelopes:

Env 1: Affidavit of Thomas C Thompson, PHD, filed 8/1/2005

Env 2: Medical Report Dr. Jack Potts dated 11/5/2005, filed 1/3/2006

Env 3: Ex Parte Mitigation Discovery Master Conference Minute Entry dated 9/28/2007, filed 9/28/2007

Env 4: Original Order to Assist Mitigation Investigation, filed 12/2/2010

Env 5: Orders to Assist Mitigation Investigation (2), filed 4/25/2011

Env 6: 1) Ex Parte Mt for Expert Witness Privileged Visitation re: Dr. John Toma; 2) Ex Parte Mt to Seal; 3) Ex Parte Mt for Expert Witness Privileged Visitation re: Dr. Mark Cunningham; 4) Ex Parte Mt to Seal; 5) Orders Sealing Documents; 6) Minute Entry dated 10/25/11; (Envelope filed 10/25/2011)

Env 7: Order Directing Dr. Edward French Privileged Visitation; Order Sealing Documents re: Dr. Edward French, filed 12/29/2011

Env 8: Minute Entry dated 12/29/2011 Filed 12/29/2011 (Envelope filed 1/9/2012)

Env 9: Report dated 12/15/2012 (Envelope filed 12/21/2012)

Exhibits (1 Small White Box):

1 Env (HD: 7/1/2013: List; Pltf Exh 1-20)

1 Env (HD: 3/7/2005: List; Dft Exh 1; Pltf Exh 2) (Envelope previously filed in CR-08-0038-AP)

2 Boxes Juror Questionnaires

3 BOXES TOTAL IN EXHIBIT ROOM |
| 24. | 20-Sep-2013 | FILED: Reporter's Transcript - 4/15/13 - Conference (April M. Hunt) |
| 25. | 23-Sep-2013 | Laura Ashbrook, Court Reporter, having filed a first request for extension of time to file transcripts,

IT IS ORDERED granting Laura Ashbrook, Court Reporter, a first extension of time to and including the 4th day of November, 2013, in which to file Reporter's Transcripts in the above-entitled matter.
(Janet Johnson, Clerk) |
| 26. | 24-Sep-2013 | FILED: Reporter's Transcript - 12/19/12 - Pretrial Hearing (Laura Ashbrook) |
| 27. | 24-Sep-2013 | FILED: Reporter's Transcript - 1/16/13 - Case Scheduling Conference (Laura Ashbrook) |
| 28. | 24-Sep-2013 | FILED: Reporter's Transcript - 2/15/13 - Complex Case Management Conference (Laura Ashbrook) |
| 29. | 24-Sep-2013 | FILED: Reporter's Transcripts - 3/6/2013 - Settlement Conference (Laura Ashbrook) |
| 30. | 24-Sep-2013 | FILED: Reporter's Transcript - 3/25/13 - Complex Case Management Conference (Laura Ashbrook) |
| 31. | 24-Sep-2013 | FILED: Reporter's Transcript - 4/18/13 - Capital Case Management Conference (Laura Ashbrook) |
| 32. | 24-Sep-2013 | FILED: Reporter's Transcript - 5/16/13 - Capital Case Management Conference (Laura Ashbrook) |
| 33. | 25-Sep-2013 | FILED: Reporter's Transcript - 9/23/11 - Oral Argument (Laura Ashbrook) |

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34. 25-Sep-2013 FILED: Reporter's Transcript - 4/18/13 - Case Management Conference (Laura Ashbrook) (Refiling)
35. 8-Oct-2013 FILED: Reporter's Transcript - 06/27/2011 - Case Management Conference (Traci Stutsman)
36. 9-Oct-2013 FILED: Reporter's Transcript - 1/11/12 - Continuance (Michele Kaley)
37. 4-Nov-2013 FILED: Second Motion for Extension of Time to File Transcripts (Laura Ashbrook)
38. 4-Nov-2013 FILED: 8 Reporter's Transcripts: 5/31/13 (Conf SEALED; See DKT No 55) ; 6/4/13 (Conf); 6/17/13 (Hrg); 6/20/13 (Conf); 7/1/13 (Trial); 7/2/13 (Trial); 7/8/13 (Trial); 7/9/13 (Trial) (Laura Ashbrook)
39. 5-Nov-2013 Laura Ashbrook, Court Reporter, having filed a second request for extension of time to file transcripts,

IT IS ORDERED granting Laura Ashbrook, Court Reporter, a second extension of time to and including December 4, 2013, in which to file Reporter's Transcripts in the above-entitled matter.
(Janet Johnson, Clerk)
40. 15-Nov-2013 FILED: (Copy of) Correcting Minute Entry re: Hearing Date 1/14/2011 - No Court Reporter Present (MCSC)
41. 4-Dec-2013 FILED: Third Motion for Extension of Time to File Transcripts (Laura Ashbrook)
42. 5-Dec-2013 Laura Ashbrook, Court Reporter, having filed a third request for extension of time to file transcripts,

IT IS ORDERED granting Laura Ashbrook, Court Reporter, a third extension of time to and including December 9, 2013, in which to file Reporter's Transcripts in the above-entitled matter.
(Hon. Ann A. Scott Timmer)
43. 9-Dec-2013 FILED: Reporter's Transcript - 7/10/13 - Jury Trial (Laura Ashbrook)
44. 9-Dec-2013 FILED: Reporter's Transcripts - 7/29/13 - Jury Trial (Laura Ashbrook)
45. 9-Dec-2013 FILED: Reporter's Transcripts - 7/30/13 - Jury Trial (Laura Ashbrook)
46. 9-Dec-2013 FILED: Reporter's Transcripts - 7/31/13 - Jury Trial (Laura Ashbrook)
47. 9-Dec-2013 FILED: Reporter's Transcripts - 8/1/13 - Jury Trial/Sentencing (Laura Ashbrook)
48. 10-Dec-2013 FILED: (Copy of) Correcting Minute Entry re: Hearing Date 11/05/2010 - No Court Reporter Present (MCSC)
49. 23-May-2014 After the Clerk of the Maricopa County Superior Court transmitted the record on appeal to this Court, the trial court issued additional orders and ruled on a motion for new trial. Therefore,

IT IS ORDERED that the Clerk of the Maricopa County Superior Court shall supplement the record on appeal with all instruments and minute entries filed on or after September 4, 2013.

IT IS FURTHER ORDERED that no later than June 10, 2014, court reporter Laura Ashbrook shall file transcripts of the following proceedings: 1/23/14 Status Conference; 5/16/14 Oral Argument. (Hon. Scott Bales)
50. 29-May-2014 FILED: Motion for Re-Sealing; Certificate of Service (Appellant Gunches)
51. 4-Jun-2014 FILED: Supplemental Record on Appeal - MCSC: Revised Index, Instruments and MEs (Electronic);

(SCANNED) 2 SEALED Manila Envelopes:

Env No 10: Report of John J. Toma, Ph.D.
Env No 11: State's Response to Defendant's Motion for New Trial
52. 16-Jun-2014 FILED: Reporter's Transcript - 1/23/14 - Status Conference (Laura Ashbrook)
53. 16-Jun-2014 FILED: Reporter's Transcripts - 5/16/14 - Oral Argument (Laura Ashbrook)

RECORD COMPLETE
54. 17-Jun-2014 The Clerk of the Court has determined that the record on appeal is complete. Therefore,

IT IS ORDERED that Appellant's Opening Brief shall be filed no later than September 15, 2014. The Answering Brief shall be filed no later than sixty (60) days after service of the Opening Brief. The Reply Brief shall be filed no later than thirty (30) days after service of the Answering Brief. (Hon. John Pelander)

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55. 18-Jun-2014 Upon considering Appellant's Motion for Re-Sealing,
IT IS ORDERED that the Clerk of this Court shall seal the entire transcript of the May 31, 2013 proceeding. (Hon. John Pelander)
56. 11-Sep-2014 FILED: (First) Motion to Extend Time to File the Opening Brief; Certificate of Service (Appellant Gunches)
57. 11-Sep-2014 FILED: Request for Copy of Sealed Documents; Certificate of Service (Appellant Gunches)
58. 11-Sep-2014 FILED: Motion to Supplement Record; Certificate of Service (Appellant Gunches)
59. 12-Sep-2014 A "Motion to Extend Time to File the Opening Brief" (Appellant Gunches) having been filed on September 11, 2014,
IT IS ORDERED granting a first extension of time to file the Opening Brief on or before December 15, 2014. (Hon. Rebecca White Berch)
60. 16-Sep-2014 Upon considering Appellant's Motion to Supplement Record and Request for Copy of Sealed Documents,
IT IS ORDERED that the parties may cite to the transcripts filed in Appellant's prior appeal, Supreme Court case number CR-08-0038-AP.

IT IS FURTHER ORDERED that upon request by counsel for either party, the Clerk of the Maricopa County Superior Court shall temporarily unseal any sealed documents in its possession in case number CR2003-038541-001 and provide copies to counsel. The documents shall then be resealed.

IT IS FURTHER ORDERED that the Clerk of this Court shall provide Appellant's counsel with copies of the sealed documents contained in envelopes 1 through 11, and the Random List (index 384). The Clerk shall allow counsel to review the sealed juror questionnaires and provide copies of any questionnaires selected by counsel. The documents shall then be resealed. The Clerk shall provide copies of sealed documents to the State's counsel upon request. Pursuant to Rule 123(e)(10), Rules of the Supreme Court, counsel shall maintain the confidentiality of all information that personally identifies jurors. (Hon. Rebecca White Berch)
61. 24-Nov-2014 FILED: (Corrected, See Event No 12) Reporter's Transcript - 2/10/12 - Rule 11 Hearing (Laura Ashbrook)
62. 15-Dec-2014 FILED: (Second) Unopposed Motion to Extend Time to File the Opening Brief; Certificate of Service (Appellant Gunches)
63. 17-Dec-2014 An "Unopposed Motion to Extend Time to File the Opening Brief" (Appellant Gunches) having been filed on December 15, 2014,
IT IS ORDERED granting a second extension of time to file the Opening Brief on or before February 17, 2015. (Hon. Ann A. Scott Timmer)
64. 17-Feb-2015 FILED: (Third) Motion to Extend Time to File the Opening Brief; Certificate of Service (Appellant Gunches)
65. 18-Feb-2015 A "Motion to Extend Time to File the Opening Brief" (Appellant Gunches) having been filed on February 17, 2015,
IT IS ORDERED granting a third extension of time to file the Opening Brief on or before March 4, 2015. (Hon. John Pelander)
66. 4-Mar-2015 FILED: Appellant's Opening Brief; Certificate of Service; Certificate of Compliance (Appellant Gunches)
67. 5-Mar-2015 FILED: Notice of Appearance (Attorney Stover Gard for Appellee State); Certificate of Service (Appellee State)
68. 30-Mar-2015 FILED: Unopposed Motion for 60-Day Extension of Time to File Answering Brief; Certificate of Service (Appellee State)
69. 31-Mar-2015 An "Unopposed Motion for 60-Day Extension of Time to File Answering Brief" (Appellee State) having been filed on March 30, 2015,
IT IS ORDERED granting a first extension of time to file the Answering Brief on or before July 6, 2015. (Janet Johnson, Clerk)
70. 20-Apr-2015 FILED: Notice of Appearance/Substitution of Counsel; Certificate of Service (John Pressley Todd substituted for Lacey Stover Gard for Appellee Gunches)
71. 6-Jul-2015 FILED: Appellee's Answering Brief; Certificate of Service; Certificate of Compliance (Appellee State)
72. 30-Jul-2015 FILED: Motion to Extend Time to File the Reply Brief; Certificate of Service (Appellant Gunches)
73. 3-Aug-2015 A "Motion to Extend Time to File the Reply Brief" (Appellant Gunches) having been filed on July 30, 2015,
IT IS ORDERED granting a first extension of time to file the Reply Brief on or before September 8, 2015. No further extensions of time shall be granted absent extraordinary circumstances. (Janet Johnson, Clerk)
74. 8-Sep-2015 FILED: Appellant's Reply Brief; Appellant's Certificate of Service; Appellant's Certificate of Compliance (Appellant Gunches)

AT ISSUE

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75. 8-Sep-2015 FILED: Request to Exceed Word Limit (of Reply Brief by 1,564 words); Certificate of Service (Appellant Gunches)
76. 9-Sep-2015 A "Request to Exceed Word Limit" having been filed, and the Clerk of the Court having been authorized by the Supreme Court to enter orders granting or denying requests for extended word count,
- IT IS ORDERED granting Appellant's request to exceed the word count limit on the Reply Brief by 1,564 words for a total of 15,564 words. The Reply Brief shall be filed as of September 8, 2015.
(Janet Johnson, Clerk)
77. 9-Sep-2015 On the Court's own motion,
- IT IS ORDERED that the above-entitled and numbered matter will be argued to the Court in due course. Counsel shall be advised of the date and time of oral argument at such time as the hearing date is determined. (Janet Johnson, Clerk)
78. 22-Sep-2015 FILED: Notice of Unavailability; Certificate of Service (Appellant Gunches)
79. 28-Mar-2016 NOTICE OF ORAL ARGUMENT: Set for Thursday, April 21, 2016 at 1:00 P.M. [twenty-five (25) minutes per side]
80. 29-Mar-2016 FILED: Notice of Filing Acknowledgment of Oral Argument (Stephen Whelihan will argue) (Appellant Gunches)
81. 31-Mar-2016 FILED: Notice of Filing Acknowledgment of Oral Argument (John Pressley Todd will argue) (Appellee State)
82. 8-Apr-2016 FILED: (Duplicate) Notice of Filing Acknowledgment of Oral Argument (Stephen Whelihan will argue) (Appellant Gunches)
83. 8-Apr-2016 FILED: Notice of Supplemental Authority; Certificate of Service (Appellant Gunches)
84. 12-Apr-2016 FILED: Notice of Supplemental Authority; Certificate of Service (Appellee State)
85. 21-Apr-2016 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: (John Pressley Todd; Stephen Whelihan)
86. 4-May-2016 FILED: Motion to Clarify; Certificate of Service (Appellant Gunches)
87. 5-May-2016 Appellant Gunches having filed a Motion to Clarify,
- IT IS ORDERED that the State may file a response, if any, no later than May 23, 2016. No reply shall be filed.
- IT IS FURTHER ORDERED that the request for additional oral argument is denied. (Hon. Robert M. Brutinel)
88. 19-May-2016 FILED: Response to Motion to Clarify; Certificate of Service (Appellee State)
89. 24-May-2016 FILED: Notice of Supplemental Authority; Certificate of Service (Appellant Gunches)
90. 25-May-2016 Appellant Gunches has filed a Notice of Supplemental Authority. Rule 31.22, Arizona Rules of Criminal Procedure, provides that a party may supplement the citation of legal authority previously presented in that party's appeal brief by filing a list of supplemental citations of legal authority. "The list of supplemental citations shall clearly identify by page number which portion or portions of the party's appeal brief is intended to be supplemented thereby, and the relevant page or pages of the supplemental authority, and shall further state concisely and without argument the legal proposition for which each supplemental authority is cited." (Emphasis added.) Appellant's Notice of Supplemental Authority does not comply with Rule 31.22.
- IT IS ORDERED that although Appellant's Notice of Supplemental Authority fails to comply with Rule 31.22, it is accepted for filing and the State may file a response to argument therein. The response, if any, shall be filed no later than June 8, 2016 and limited to five pages. No reply shall be filed.
- IT IS FURTHER ORDERED that any future Notice of Supplemental Authority that fails to comply with Rule 31.22 will be stricken.□ (Hon. John Pelander)
91. 31-May-2016 FILED: Response Re: Order Filed 5/25/2016; Certificate of Service (Appellee State)